IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Bail Appl..No. 6001 of 2007()

CRIME AND OCCURRENCE REPORT NO.40/06 OF THE EXCISE RANGE OFFICE, IRINJALAKUDA

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PETITIONER/2ND ACCUSED

SHAJU, AGED 30 YEARS, S/O. MADHAVAN,
PARAKULAM HOUSE, PORUNAMKUNNU,
VELLANCHIRA DESOM, ALOOR VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

BY ADV. SRI.N.KRISHNANKUTTY PILLAI

RESPONDENTS: COMPLAINANT

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1. THE EXCISE INSPECTOR,
EXCISE RANGE OFFICE, IRINJALAKUDA, THRISSUR
DISTRICT, REPRESENTED BY THE GOVERNMENT PLEADER,
A.G.'S OFFICE, HIGH COURT, ERNAKULAM.

2. STATE OF KERALA, REPRESENTED BY
THE GOVERNMENT PLEADER, ADVOCATE GENERAL'S
OFFICER, HIGH COURT, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.6001 of 2007

Dated this the 3rd day of October 2007

O R D E R

Application for anticipatory bail. The petitioner is the second accused. Altogether there are three accused persons. The crux of the allegations is that 2000 litres of wash was kept in the possession of accused 1 and 2. Seeing the excise party, they allegedly took to their heels and could not be apprehended. Third accused is the landlord. Name of the petitioner is shown as one of the persons who had run away on seeing the excise party in the occurrence report and in the seizure mahazer. Detection took place on 4/12/2006. The petitioner has not been arrested so far. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He may be granted anticipatory bail, it is prayed. His name has been given falsely to the excise officials by some local persons including one of the attesters to the seizure mahazer who has animosity against the petitioner. This, in short, is the plea.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances warranting invocation of the jurisdiction under Section 438 Cr.P.C. The learned Public Prosecutor submits that this is a fit case where the petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. The allegations are serious. The name of the petitioner appears in the earliest contemporaneous document. At the moment and with the available inputs, there is no reason to assume that the allegations are false. In fact, no specific allegation even, that the excise party has any ill will or animosity against the petitioner is raised The attempt to suggest that there is animosity for one of the attesters to the seizure mahazer against the petitioner is not now shown to be reasonable or acceptable. I am in these circumstances, satisfied that there are no features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the

learned Public Prosecutor, is a fit case where the petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

3. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007